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RIGHTS OF THE CHILD

Joint written statement submitted by the Friends World Committee for Consultation (Quakers), a non-governmental organization in special consultative status, and the World Organization against Torture, a non-governmental organization on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[13 March 1997]

> "When subjected to State torture ... political activists have coping mechanisms that ... children who are tortured because they happen to be in the wrong place or belong to the wrong ethnic group, or both ... obviously do not have." M.D. Reynes

1. In general, definitions of and protection from torture and other forms of ill-treatment at both the international and national levels have been interpreted with reference to adults rather than from a child's perspective. The adoption and wide ratification of the Convention on the Rights of the Child is beginning to change attitudes in some respects. Unfortunately, there is still a tendency for children in high-risk situations - including child soldiers, children in conflict with the law, in detention, in situations of armed conflict and states of emergency - to be treated as if they were adults. However, such "equal treatment" may impact differently on children simply because they are children. In the words of the Special Rapporteur against torture:

> "Children are necessarily more vulnerable ... and, because they are in the critical stages of physical and psychological development, may suffer graver consequences than similarly treated adults."

2. Some of the particular problems identified by the above-named non-governmental organizations as needing further study are described in the following paragraphs.

3. Under civilian legal regimes, special provision is normally made at all stages in the legal process to take account of the age of the child. However, in situations of armed conflict or internal disturbances, often emergency or anti-terrorism legislation is introduced which takes no account of age. Thus, when the problems relating to due process, fair trial and the need for protection against torture or ill-treatment are gravest, the legal protections are in fact weakened.

4. When faced with armed conflicts or internal disturbances in which children are involved as participants, there is a tendency for Governments to lower the age of criminal responsibility. Yet at these times, children are often being forced or pressured into involvement. There is a need for careful consideration of the issues, including at what age a child should be held responsible for his/her acts; whether or when this responsibility should be treated as a criminal one; and what kind of proceedings and dispositions are appropriate.

5. In some countries children are legally or illegally recruited into the armed forces where they are subjected to military law, punishment and discipline which take no account of age. The applicability of these (including in military schools) and their impact on children also merit consideration.

6. The legal definition of torture: article 37 (a) of the Convention on the Rights of the Child contains an obligation to protect children from torture, but the Convention provides no definition. Other treaties do provide

definitions but the restrictive nature of the existing definitions, and the way they have been interpreted, raise questions about their appropriateness when applied to children. Amongst the issues are:

(a) Degree of pain. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment considers only severe pain or suffering as components of torture. This leaves a margin of interpretation: punishment which would be considered as light for an adult, may result in far more serious physical and psychological damage for children. Prison sentences or periods of solitary confinement could provoke in a child suffering at a very different level than for an adult. Moreover, even though corporal punishment for adults is generally prohibited, corporal punishment for children is still widely accepted. Children should be offered more, not less, protection than adults. The assessment of the degree of suffering currently appears to take no account of the age of the child;

(b) The intention of those responsible. The Convention against Torture considers that pain or suffering must be inflicted intentionally for the act to be considered as torture. With children, this concept would appear to be too restrictive. For example, children are often exposed to the threat of violence when detained with adults. The staff of detention centres must be aware of the grave danger to which minors are exposed. Whilst the international system takes into account intention, it seems fundamental that particularly in the case of children the degree of negligence is also considered;

(c) The perpetrator. The Convention against Torture considers that torture or other ill-treatment applies only when "inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity" (art. 1). However, unlike an adult, who is autonomous, a minor is legally under the authority of his/her parents or guardian. Thus, the question arises as to whether beatings administered by staff in educational institutions which result in an acute state of stress or suffering should not also be considered torture when the violence is inflicted for punitive rather than pedagogical ends. The intention of the perpetrators also needs to be considered from the perspective of the child: whilst the former may consider that the intention of the violence is to educate, the latter may feel that he or she has been punished;

(d) Discipline and legal punishment. The current interpretation of international law by the Committee against Torture stresses that lawful punishments should not be considered only at the national level. If a national law authorizes a punishment prohibited by an international instrument the sanction cannot be considered as lawful. However, in the case of children, the prohibition of sanctions at the international level is written in very general language which gives insufficient clarity and guidance. While the definition of torture excludes suffering resulting from lawful punishment, the latter must be proportionate to the crime committed and the age of person being sanctioned. Different judicial systems present an extremely wide choice of punishments.

7. Prosecution of alleged perpetrators of torture. In principle, torture is a crime which must be prosecuted ex officio, as is stipulated by the

Convention against Torture. However, this principle is largely unimplemented. Even where the mechanisms exist, most child victims do not file a complaint. The reasons include lack of awareness of procedures, complexity of procedures and/or fear of reprisals.

8. The above-named non-governmental organizations believe that a thorough study of these subjects would make a significant contribution to the understanding of these issues, and would assist the human rights treaty bodies and Governments in their implementation of human rights standards. They therefore urge the Commission on Human Rights to request the Subcommission on Prevention of Discrimination and Protection of Minorities to undertake a study of the application of international human rights standards to the situation of children at risk of torture and other forms of ill-treatment, taking account of the fact that the persons concerned are children and the particular problems noted above.